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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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12 WARREN J. LEACH,

13 Plaintiff,

CIV. S-03-1970 MCE PAN

14 v.

15 JO ANNE B. BARNHART,
16 Commissioner of Social
Security,

Findings and Recommendation

17 Defendants.
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19 Pursuant to 42 U.S.C. § 405(g), plaintiff requests this
20 court review defendant's decision requiring he repay disability
21 insurance benefits.

22 Plaintiff was awarded benefits beginning April 22, 1996,
23 but later returned to work and continued to receive benefits
24 after he completed a trial work period, viz. a period of time a
25 beneficiary is allowed both to receive benefits and test his
26 ability to return to work, which ended February 1998. When

1 demand for \$3,668.40 repayment was made, plaintiff requested
2 waiver.

3 Recovery of an overpayment may be waived if a person is
4 without fault and recovery would defeat the purpose of the Act,
5 viz. deprive a person of income required for living expenses or
6 be "against equity and good conscience." 20 C.F.R. § 404.506.

7 Fault is found if the recipient failed to furnish
8 information which he knew or should have known to be material.
9 20 C.F.R. § 404.507(b). Determining an individual's fault is
10 "highly subjective, and highly dependent on the interaction
11 between the intentions and state of mind of the claimant and the
12 peculiar circumstances of his situation." Albalos v. Sullivan,
13 907 F.2d 871, 873 (9th Cir. 1990) (citing Elliott v. Weinberger,
14 564 F.2d 1219, 1233 (9th Cir. 1977), aff'd in part and rev'd in
15 part sub nom. Califano v. Yamasaki, 442 U.S. 682, 99 S.Ct. 2545
16 (1979)). The Commissioner's finding that a recipient was at
17 fault in receiving overpayment must be upheld if supported by
18 substantial evidence. Albalos, 907 F.2d at 873; Anderson v.
19 Sullivan, 914 F.2d 1121, 1124 (9th Cir. 1990).

20 The burden is on the recipient to show he or she is
21 without fault and that recovery would defeat the purpose of Title
22 II or be against equity and good conscience. Anderson, 914 F.2d
23 at 1122; Harrison v. Heckler, 746 F.2d 480, 482 (1984). This
24 court reviews the Commissioner's denial of a waiver request to
25 determine if the proper legal standard was applied and if the
26 denial is supported by substantial evidence. Albalos, 907 F.2d

1 at 873; Harrison, 746 F.2d at 481.

2 Defendant found plaintiff was not without fault because
3 he did not report his work activity until June 2001, even though
4 when he applied for benefits he signed a statement that he would
5 report all of his work activity. Moreover, by the time plaintiff
6 had filed his request for a hearing before an administrative law
7 judge, he had agreed to repay the overpayment in monthly
8 installments of \$50. Tr. 10-11.

9 Plaintiff requests the court order defendant to cease
10 collecting the overpayment because of financial hardship.

11 Because defendant's decision that plaintiff was not
12 without fault is supported by substantial evidence, the relief he
13 seeks is not available.

14 I recommend that the decision be affirmed.

15 These findings and recommendations are submitted to the
16 Honorable Morrison C. England, Jr., the United States District
17 Judge assigned to this case. 28 U.S.C. § 636(b)(1). Written
18 objections may be filed within ten days after being served with
19 these findings and recommendations. The document should be
20 captioned "Objections to Magistrate Judge's Findings and
21 Recommendations." The failure to file objections within the
22 specified time may waive the right to appeal the District Court's
23 order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

24 Dated: May 18, 2005.

25 /s/ Peter A. Nowinski

PETER A. NOWINSKI
26 Magistrate Judge